

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer Information	)	

**COMMENTS OF ATX TECHNOLOGIES, INC**

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## **COMMENTS OF ATX TECHNOLOGIES, INC.**

ATX Technologies, Inc. (“ATX”) hereby submits these Comments in the matter of the Federal Communications Commission’s (the “Commission” or “FCC”) *Second Further Notice of Proposed Rulemaking* in CC Docket No. 96-115 (“NPRM”), released September 7, 2001.

In the NPRM, the Commission sought public comment on implementing Section 222 of the Communications Act of 1934, as amended. Section 222 governs telecommunications carriers’ use and disclosure of customer proprietary network information (CPNI). The request for comment follows litigation challenging the Commission’s CPNI rules. In the NPRM, at paragraph 22, the Commission seeks comment on implementing the Wireless Communications and Public Safety Act of 1999 (the 911 Act), which amended Section 222. ATX’s comments are confined to that part of the NPRM requesting comment on implementing the 911 Act.

### **Summary**

In implementing amended Section 222, the Commission should be guided by the plain language of Section 222. That section applies solely to telecommunications carriers as defined by the Communications Act of 1934, as amended. Any rules governing the use and disclosure of wireless location information that are encompassed within the meaning of CPNI must be limited to telecommunications carriers within the jurisdiction of the Commission. The 911 Act does not authorize the Commission to regulate entities other than telecommunications carriers. Nothing in Section 222, as amended by the 911

Act, suggests that the Commission should regulate the terms of telematics offerings nor does it confer new jurisdiction on the Commission.

## **ATX**

ATX is a provider of telematics services to automobile manufacturers (original equipment manufacturers or “OEMs”). Telematics services provided by ATX integrate wireless communications, location technology, computer technology and the availability of live operators to provide emergency response and other needs to customers who have telematics capability in their vehicle. At the heart of ATX’s technology is the ability to locate precisely the individual confronted with an emergency, to communicate with the vehicle and its occupants, to provide assistance to that individual, and to notify public safety agencies where that individual is so that help can be dispatched.

The cornerstone of ATX’s telematics services is automatic crash notification (“ACN”) and Mayday response services, which rely upon analog cellular networks to transmit critical data and open a voice channel between the vehicle and an ATX call center. Similar to the safety benefits provided by standard factory installation of seat belts and air bags, telematics-based ACN/Mayday systems represent the latest generation of in-vehicle safety technology. The ACN service automatically notifies a private telematics call center, such as ATX’s, that a vehicle’s air bag or emergency-tensioning restraint has been deployed. Similarly, “Mayday” service signals the call center when the motorist pushes an in-vehicle emergency call button. Currently, ATX alone has over 300,000 subscribers and receives over 60,000 signals per month from motorists with telematics-equipped vehicles. There are approximately 1.5 million vehicles on the road

today with telematics systems. In addition, ATX and other telematics service providers offer other, location-based safety-related services such as navigation, roadside assistance, real-time traffic reports and remote vehicle diagnostics which require broad coverage and rely on analog voice technology.

### **Automobile Manufacturers and Telematics Providers Ensure Full Disclosure Regarding Customer Information**

Automobile manufacturers and the telematics companies providing the technology and service to OEM's and their customers have long recognized the important interest in safeguarding individually identifiable personal information and disclosing the parameters of how that information will be used. The provision of telematics services is accompanied by notice and consent of the vehicle owner regarding how the system works.

When an individual subscribes to OEM's telematics service provided by ATX, the agreement sets forth the information disclosures and privacy policy. The details of the disclosure inform the subscriber how information is stored and for what purpose. It also informs the subscriber when the information will be disclosed. The agreement is a critical part of the relationship established when a vehicle owner subscribes to telematics services.

Telematics has evolved from private investment, not government mandate. Its service provides fundamental public safety response capability to a growing number of subscribers. Advising the vehicle owner what information is disclosed, under what circumstances and to what parties it is released to is an integral element of providing the quality service through advanced technology that can make a tangible difference to an

individual facing an emergency. It remains ATX's foremost interest to pursue such a standard.

### **Neither Section 222 nor the 911 Act Confer Jurisdiction or Require FCC Regulation Addressing Telematics**

Neither ATX nor any other current telematics provider is a telecommunications carrier as defined by the Communications Act. Neither ATX nor its competitors have access to the consumer proprietary information maintained by telecommunications carriers, and the subject of Section 222. Section 222 is specific in referring to the duty of telecommunications carriers to protect the confidentiality of proprietary information relating to its customers. Section 222 is not a general grant of authority to the Commission to regulate entities that may come into possession of information that can be characterized as customer proprietary information.

The 911 Act's amendments to Section 222, in section 222(f), prohibits disclosure of a commercial mobile service subscriber's call location information without the subscribers express consent, with the exception of those circumstances involving the delivery of emergency services.<sup>1</sup> Congress' intent is to ensure that a telecommunications carrier not disclose a wireless customer's location information without the customer's consent unless the disclosure is necessary for the dispatch of emergency services.<sup>2</sup>

The plain language of the law limits Section 222 to how telecommunications carriers collect, use, disclose and maintain personally identifiable location-based information regarding their subscribers. Moreover, the 911 Act states specifically that “(n)othing in this subsection shall be construed to authorize or require the (Commission)

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<sup>1</sup> 911 Act, Pub. L. No. 106-81, 113 Stat. 1286 (1999).

<sup>2</sup> S. Rept. No. 106-138 at 7 (1999).

to impose obligations or costs on any person.”<sup>3</sup> The Commission should reject arguments asserting that Section 222, as amended, authorizes regulation of location services in general, or of entities with wireless location technology capabilities that have business relationships with telecommunications carriers.

This limitation is consistent with both the purposes of Section 222 and those of the 911 Act. The language of Section 222 and its legislative history makes clear that the purpose of the provision is to protect the privacy of information that carriers collect in the course of providing service to consumers.<sup>4</sup> The 911 Act directed the Commission to assist states and other interests to improve the emergency communications infrastructure, emphasizing the importance of the emergency response and public safety communications.<sup>5</sup> Automobile manufacturers and telematics providers are not within any reasonable parameter of being subject to Section 222’s CPNI policies.

Nor can the case be made to invoke any Commission authority under Section 1 of the Communications Act. Beyond being outside of the parameters noted in the NPRM, the assertion of such ancillary jurisdiction must have some reasonable relation to the effective regulation of a subject matter the Commission has jurisdiction over.<sup>6</sup> In the case of telematics, the Commission would have to determine that in order to carry out a purpose in regulating wireless telecommunications, it must regulate automobile manufacturers and telematics providers in how they provide service. In the context of CPNI, there is no encumbrance that restricts the Commission’s authority over wireless telecommunications carriers.

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<sup>3</sup> Section 3(b), 911 Act, Pub. L. No. 106-81, 113 Stat. 1286 (1999).

<sup>4</sup> S. Conf Rept. No. 104-230 at 205 (1996), H.Rept. No. 104-204, Pt I, at90 (1995).

<sup>5</sup> 911 Act at Section 2(b).

<sup>6</sup> U.S. v. Southwestern Cable Co., 392 U.S. 157, 178 (1968).

## **Conclusion**

In exercising its authority under Section 222, the Commission must adhere to the plain language of Section 222. That section applies solely to telecommunications carriers as defined by the Communications Act of 1934, as amended. Any rules governing the use and disclosure of wireless location information that are encompassed within the meaning of CPNI must be limited to telecommunications carriers within the jurisdiction of the Commission.

Respectfully submitted,

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